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MT LEGISLATIVE HISTORY

Chapter 24 1989

Bill (H) 19 S _____ Original bill & hist. ___C

H. Committee on Business & Economic Development S. Committee on Business & Industry

Hearing Date(s)		Hearing Date(s)	
Jan 05	✓C	Jan 24	✓C
Jan 12	✓C	_____	___C
_____	___C	_____	___C
_____	___C	_____	___C
Date Out Jan 12	✓C	Jan 24	✓C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

Form CS-32
Rev. 1985

House Bills

STATUS SHEET

51st LEGISLATIVE SESSION

Business and Industry COMMITTEE

BILL UMBER	ENTERED COM. DATE	DATE CON-SIDERED	OUT OF COM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMENDED DATE	DO NOT PASS AS AMENDED DATE	BE CON-CURRED IN DATE	BE NOT CON-CURRED IN DATE	BE CON-CURRED IN AMENDED DATE	BE NO CONCUR IN A AMEND DATE
HB3	1/16	1/19	1/19							1/19	
HB16	1/13	1/18	1/18					1/18			
HB19	1/19	1/24	1/24							1/24	
HB36	1/18	1/24	1/24					1/24			
HB129	1/25	1/27	1/27							1/27	
HB130	1/25	1/27	1/27					1/27			
HB150	1/25	1/27 1/30	2/3							2/3	
HB151	2/14	3/6	3/8					3/8			
HB191	2/14	3/6	3/8						3/8		
HB199	1/27	2/2	2/2					2/2			
HB209	2/10	3/1	3/2						3/2		
HB218	2/2	3/7	3/7					3/7			
HB220	1/27	3/21 3/17	3/21						3/20		
HB247	2/13	2/28	3/2 3/13 3/16							3/10	
HB240	3/28	4/5	4/7								

Use a separate sheet for Senate Bills, House Bills, and Resolutions.

Amendments and Votes: Senator Lynch made a motion to amend the language on Page 7, line 8, by striking "conducted" and inserting, "supervised". Mary McCue stated the same language was involved on Page 6, line 24. (See Exhibit 5). Senator Lynch stated his motion to amend would grant Mary McCue the discretion to make the necessary language changes. Senator Noble seconded the motion. The motion Carried Unanimously.

Recommendations and Votes: Senator Lynch expressed his concern for the electrologists. He said, he agreed they should be regulated by the Medical Board, and questioned the status of the House Bill addressing the issue. He stated he was reluctant to eliminate licensed electrologists from Senate Bill 151, without knowing the Medical Examiners were going to accept them.

Senator Boylan said he was doubtful the Medical Board would accept the electrologists.

Senator Noble suggested the committee hold the bill until the electrology problem was solved.

Senator Lynch agreed, and the rest of the committee said they preferred to hold the bill also. No action was taken on the bill.

HEARING ON HOUSE BILL 19

Presentation and Opening Statement by Sponsor: Representative Swysgood said the intent of House Bill 19 was to eliminate the requirement that bank directors be stockholders. He said that since 1927, section 32-2-324 has required bank directors to own $1,000 par value of the banks stock. He said that in many cases, par value is not the same as market value of the stock. He said they had considered changing the law requirement to market value, but some community don't have a market value, and the law would be unenforceable. He said HB 19 repealed the requirement for owing stock to serve on a bank board. (See Exhibits #6 and #7).

List of Testifying Proponents:

Bill Leary - Montana Bankers Association

List of Testifying Opponents:

None

Testimony: Mr. Leary said they supported HB 19 because it would enable a local bank, regardless of whether it was a state charter or a national charter, to select the best people to serve on the board, regardless of that person's financial ability. He said ownership of stock in their own right, as present law required, was prohibitive for board director selection. He stated the best board members weren't always available, with this requirement. He said the bill allowed the bank some flexibility in board selection, but still required two thirds of the board to be residents of the State of Montana.

Questions From Committee Members: Senator Williams asked what determined par value, and if it was uniform from bank to bank?

Mr. Leary said par value varied from bank to bank, and he would refer the other part of the question to Bruce Ellis.

Bruce Ellis of the Montana Bank System said par value was normally set when the stock is originally issued. He said that if par value was set at $10 per share, the subscriber would have to pay $20 a share. He said the bank's capital account then consisted of the $10 from each common share in stock plus another $10 from paid in surplus. He said that as time passed, and the capital account grew, that stated value may be raised.

Representative Swysgood told Senator McLane, board members in other businesses weren't required to be shareholders. He stated this law only pertained to banking.

Closing by Sponsor: Representative Swysgood stated testimony in the House of Representatives had revealed there were some technical violations of the current statute, so HB 19 would allow those banks to become aligned with the law.

DISPOSITION OF HOUSE BILL 19

Discussion: Mary McCue said the title had a grammatical error in the title. She stated the bill had two

requirements originally, and when it was amended the title had not been changed to indicate the singular requirement.

Amendments and Votes: Senator Meyer made a motion to amend Senator McLane seconded the motion. The motion Carried Unanimously.

Recommendations and Votes: Senator Meyer made a motion HB 19 BE CONCURRED IN AS AMENDED. Senator Williams seconded the motion. The motion Carried, with Senator Hager opposing the motion. Senator Meyer carried HB 19 on the floor of the Senate.

DISPOSITION OF SENATE BILL 179

Discussion: Senator Lynch told Senator Williams the equivalency exam wasn't really that difficult, because the GED exam was readily available, inexpensive, and had a rather low requirement for passing, with a re-testing availability.

Senator Weeding expressed concern as to whether a GED should be a necessity, or that it would make the student a better cosmetologist?

Amendments and votes: Senator Lynch made a motion SB 179 DO PASS. Senator McLane seconded the motion.

Senator Thayer expressed a concern for the social and economic repercussions of possibly closing off one more avenue of employment, rather than carry out the intent of encouraging a better education. He said he had a divided personal concern for the affect.

Senator Weeding asked Senator Lynch if certain reading disabilities would affect the ability to earn a GED? He asked if it wasn't possible for an individual to learn a trade, such as mechanic, or carpenter?

Senator Lynch said he wasn't aware of any reading disability that could not be worked with.

Senator Williams stated that in 1987, the percentage of Montana students graduating from high school was 83%. He said he was concerned what became of the other 17%? He asked what percentage of the 17% actually acquire their GED?

ROLL CALL

BUSINESS & INDUSTRY COMMITTEE

DATE 1/24/89

51st LEGISLATIVE SESSION 1989

NAME	PRESENT	ABSENT	EXCUSED
SENATOR DARRYL MEYER	✓		
SENATOR PAUL BOYLAN	✓		
SENATOR JERRY NOBLE	✓		
SENATOR BOB WILLIAMS	✓		
SENATOR TOM HAGER	✓		
SENATOR HARRY MC LANE	✓		
SENATOR CECIL WEEDING	✓		
SENATOR JOHN"J.D."LYNCH	✓		
SENATOR GENE THAYER	✓		

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

January 24, 1989

MR. PRESIDENT:

We, your committee on Business and Industry, having had under consideration HB 19 (third reading copy -- blue), respectfully report that HB 19 be amended and as so amended be concurred in:

Sponsor: Swysgood (Meyer)

1. Title, line 5.
Strike: "REQUIREMENTS"
Insert: "REQUIREMENT"

AND AS AMENDED BE CONCURRED IN

Signed: _____
Gene Thayer, Chairman

H.C. 1/24/89

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 6
DATE 1/24/89
BILL NO. HB 19

HOUSE BILL #19

Representative Charles Swysgood

January 16, 1989

The intent of House Bill #19 is to eliminate an archaic law which imposes limiting restrictions on banks in today's unregulated, competitive environment. As amended it repeals the qualifying stock requirement for bank directors, but retains the two-thirds residency requirement for a bank's board.

Since 1927, Section 32-1-324 has required all individuals own $1,000 par value of the bank's stock in order to serve on the board. In many cases, banks like First Interstate will only have a par value of a dollar per share, but a market value of $23 a share thereby requiring the individual to purchase $23,000 in First Interstate stock before he can serve as a director.

We could change the law to market value but community bank stock does not have a market value. Then the law would be impossible to appraise and enforce.

In addition the qualifying stock law prevents a bank from placing a low-income or consumer advocate on the board. A bank may want a diversified board to represent all special interests in the community, but is restricted by this law. Repeal of this law would allow the bank to be more responsive to the market.

Also, most state banks use a buy-back agreement with their directors wherein they guarantee to buy back the stock when the director leaves the board. According to section 32-1-324 every director must own the stock in his own right and not pledge it as security for any loan and debt. Technically most state banks are violating this law today, so therefore we must repeal this law.

Montana law, Section 35-1-401, does not require directors for other corporations to be share holders. This is also true with competing financial providers like credit unions, savings and loans, stock brokers, retailers, etc. Therefore, this law should be repealed.

Bankers, the Montana Bankers Association, and the Commissioner of Financial Institutions agree it is an archaic law and no one knows why it was required in the first place. Perhaps someone thought years ago a bank director should have qualifying shares of stock to enhance his interest in the bank. Today, however, bank directors are subject to a host of laws with stiff fines and long imprisonment in addition to personal liability for their actions. Directors' duties are imposed by bank and bank holding company statutory law, common law, securities law, criminal law, and antitrust law. The directors are not mere ornaments of the bank to lure public confidence. When they become directors, the law casts upon them the important duties of supervision and direction, which they can not delegate to the officers; and therefore the stockholders and depositors have the right to intrust the institution with their money, in confidence that the directors will perform these duties. If a court finds that a director had a duty to a particular person, did not fulfill that duty and that the person to whom this duty was owed was damaged, then the court will hold the director liable to that person. In such a case, the directors personal assets are at risk.

This archaic law simply discriminates against state banks, and is a useless nuisance that causes additional administrative headaches and costs which are ultimately passed on to the consumer.

I urge you to approve HB-19.

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 7
DATE 1/24/97
BILL NO. HB 19

EXCERPTS FROM

"RESPONSIBILITIES AND LIABILITIES OF BANK
AND BANK HOLDING COMPANY DIRECTORS"
By Robert E. Barnett

Section 110. Directors' duties are imposed by bank and bank holding company statutory law, common law, securities law, criminal law, and antitrust law. Bank and bank holding company directors are liable for damages caused when they breach a duty to those for whom the duty was intended as a protection. Similarly they may be criminally liable to the state or federal government for violations of criminal law.

Section 113. Even the most conscientious director may be sued for acts or omissions that in the long run may prove lawful, legitimate, and defensible.

Section 126. If a national bank director knowingly violates or knowingly permits or assents to the violations of any of the provisions of the national banking laws, and if the bank is dissolved, he shall be personally liable in his personal and individual capacity for all damages suffered by the bank, its shareholders, or any other person.

Section 130. Not only the bank but any officer, director, employee, agent, or other person participating in the conduct of the affairs of the bank, may be liable for that civil penalty.

Section 157. Civil money penalties can now be imposed against banks or bank holding companies themselves or against an individual officer, director, employee, agent or other person participating in the conduct of the affairs of the institution who violates Sections 22 and 23A of the federal reserve act... provisions. Penalties range from $100 a day for interest violations to $1,000 a day for violations of a final cease and desist order.

Section 158. Lawsuits are filed against directors in about two of every three bank failures.

Antitrust
Section 160. Specific penalties under law can be severe, running as high as $100,000 for a director ($ 1,000,000 for a corporation) or up to three years in prison. Civil liability exists as a result of violations of the criminal provisions, and damages can be very high in such suits.

Section 163. Directors are liable for fines and imprisonment for violations of applicable criminal law. The penalties vary depending on the crime, but range up to $10,000 and five years imprisonment.

(Schendel Associates Community Banking Consultants and Advisors)

EXCERPTS FROM

FOCUS ON THE BANK DIRECTOR

The responsibilities and liabilities of bank directors are imposed by common law, statutory law, securities law, antitrust law, and criminal law. p. 95

Under common law, all corporate directors, including bank directors, bear personal liability to their corporate shareholders for directing and supervising the corporation in the stockholders' best interests. p. 97

If a court finds that a bank director had such a duty to a particular person, did not fulfill that duty, and that the person to whom the duty was owed was damaged as a result of this failure, then the court will hold the director liable to that person. p. 97

The directors were not mere ornaments to the bank to lure public confidence. When they became directors, the law cast upon them the important duties of supervision and direction, which they could not delegate to the officers; and therefore the stockholders and depositors had the right to intrust the institution with their money, in confidence that the directors would perform those duties. When sued for losses which resulted from careless or unlawful acts and unfortunate transactions, they can never set up as a defense that they did not examine the books of the bank , knew nothing about the loans or discounts, were ignorant of banking business, or that they intrusted the management and supervision of the business to the executive officers, in whom they had confidence. The welfare of the public and the interests of banking institutions alike forbid this. p. 98 - 99
Warren vs. Robinson, 57 pac 287 (Utah, 1899)

A director who violates or allows a violation of the law can be sued for damages by anyone harmed by the actions. p. 103

Section 53 provides that if the directors of a national bank knowingly violate or knowingly permit the officers or employees of the bank to violate any of the other provisions of the act, every director who participated in the violation or consented to it shall be liable, personally and individually, for any damages resulting from the violation, whether the damages are to the bank itself, its shareholders or any other particular person. p. 104

Violations of the securities laws can lead to penalties of up to $5,000 and five years in prison. Civil liability for a bank director also may arise from the violations of the securities laws, if damages can be proved. p. 117

Directors who knowingly or willfully commit a criminal act or omission can be held liable for penalties of up to $10,000 and five years in prison, depending on the crime. p. 121-122

In addition to criminal penalties, violations of criminal laws may also give rise to civil liabilities. p. 122

(Copyright 1984, American Bankers Association)

DATE 1/24/89

COMMITTEE ON Business & Industry

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Oppose
Kyle Nagel	MT St Vol. Firefighters	HB 36	✓	
Garth Jacobsen	Sec. of State	SB 191	✓	
Bob Smith	AG's Office	HB 36		
Bill LeAPley	Mont. Bankers Assn	HB 19	✓	
Bruce D. Ellis	Montana Bankers Assn	HB 19	✓	
Dick Zieg	1st Nat. Bank-Lewistown	HB 19	✓	

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
51st LEGISLATURE - REGULAR SESSION

Call to Order: By Bob Pavlovich, on January 5, 1989, at 8:00 a.m.

ROLL CALL

Members Present: All

Members Excused: None

Members Absent: None

Staff Present: Paul Verdon and Sue Pennington

Announcements/Discussion: None

HEARING ON HOUSE BILL 19

Presentation and Opening Statement by Sponsor: Rep. Swysgood, District 73, gave a brief overview of his bill. Rep. Swysgood stated that the section that had the most questions to discuss is Section 32-1-322, MCA.

List of Testifying Proponents and What Group they Represent:

Bill Parker, President & Chief Executive Officer, First Interstate Bank, Great Falls
John Cadby, Montana Bankers Association
Fred Flanders, Commissioner of Financial Institutions, State of Montana

List of Testifying Opponents and What Group They Represent:

Roger Tippy, Independent Bankers Association
Keith Colbo, Montana Independent Bankers Association

Testimony:
John Cadby explained how this bill came about, that a small independent bank in eastern Montana is owned by a family from Minnesota which makes up the board for the bank. The owner called Mr. Cadby and asked him if he could help get rid of the residency requirement because every time the bank is examined by the Commissioner's office it is written up because two-thirds of the directors are not are not residents of Montana.

Mr. Cadby and the Montana Bankers' Association's met with the commissioner; none of them could figure out why the residence requirement was put there in the first place. Second, none of the bank's competing financial institutions have similar requirements.

A lot of the banks have directors from out of state serving on their boards. But, of course, all of them do comply with the law and do have, except the one he mentioned, two-thirds of the directors from Montana.

The primary purpose of the bill is to try to clear up this stock situation. He has been advised that national banks have to by $5,000 worth of whatever the value exists at the time a director goes on a board. Maybe you can change this and just strike the word "par" and leave the $1,000 in if you want. That would probably solve that problem, I would leave that up to Fred Flanders to answer. Technically, most banks violate this law because they have buy-back agreements so that when you serve on a board and you buy stock, you enter into a buy-back agreement with that bank. The bank buys the stock back when the director leaves the board. In essence, the banks are violating the law with this buy-back agreement. So, the director, therefore, does not own the stock in his own right as required by law. I think the simplest thing to do would be to repeal the section and get it out of the way.

See the attached exhibits for further testimony.

Questions From Committee Members: Representatives Thomas, Kilpatrick, Wallin, Hansen, Glaser, Smith, Simon, Bachini, Blotkamp, and Johnson had questions which were answered by Mr. Cadby, Mr. Parker, Mr. Flanders, and Mr. Tippy.

Closing by Sponsor: Rep. Swysgood in closing stated that in the testimony from both sides today that because of the early drafting of this under some of the new rules that we have instituted, that some of the information wasn't available to us that came to light and we all heard that in opening testimony, that if you have problems with the residency requirement that he has no problem with retaining the two-thirds membership for the board of directors. In light of this, my personal opinion is that currently that takes place any way, and that the practice continues. Either way he has no problems retaining the two-thirds residency requirement.

The main thing I think is that the fact that current law requires in some cases a critical financial investment to serve as director doesn't guarantee that that director

necessarily is going to be prudent or whatever, just because there is a monetary value attached to his being able to serve. What it does, is to exclude those that could be qualified but might not have the financial resources to serve in this capacity because of the current law.

DISPOSITION OF HOUSE BILL 19

Discussion: None

ADJOURNMENT

Adjournment At: 10:00 a.m.

BOB PAVLOVICH, Chairman

BP/sp

0403.MIN

DAILY ROLL CALL

BUSINESS & ECONOMIC DEVELOPMENT COMMITTEE

51th LEGISLATIVE SESSION -- 1989

Date 1/5/89

NAME	PRESENT	ABSENT	EXCUSED
PAVLOVICH, BOB	X		
DeMARS, GENE			
BACHINI, BOB			
BLOTKAMP, ROB			
HANSEN, STELLA JEAN			
JOHNSON, JOHN			
KILPATRICK, TOM			
McCORMICK, LLOYD "MAC"			
STEPPLER, DON			
GLASER, BILL			
KELLER, VERNON			
NELSON, THOMAS			
SIMON, BRUCE			
SMITH, CLYDE			
THOMAS, FRED			
WALLIN, NORM			
PAUL VERDON			

CS-30

HOUSE BILL #19

TESTIMONY ON BANK DIRECTORS BILL

House Business
and Economic Development Committee

8:00 a.m.
Thursday
January 5, 1989

Mr. Chairman and members of the Committee:

House Bill #19's main goal is to eliminate archaic laws and help level the playing field with competing financial providers in today's unregulated environment. Since drafting the bill, however, we have learned national banks must also have two-thirds of their directors as residents of Montana. Other competing financial providers don't have a similar requirement and we do not think such a requirement is needed. On the other hand, it is not difficult for most banks to have at least two-thirds of their board be residents of Montana if you wish to retain it.

The other section, however, has caused headaches for most state banks and should be repealed even though national bank directors have to invest $1,000. Since 1927, Section 32-1-324 has required all individuals to have one thousand dollars par value of stock in order to serve on the board. In many cases a system bank like First Interstate will only have a par value of a dollar per share, but a market value of say twenty dollars a share thereby requiring the individual to purchase twenty thousand dollars in First Interstate stock before he can serve as a director.

We could change the law to market value but community bank stock does not have a market value and it would be impossible to appraise and enforce.

In addition the $1,000 qualifying stock prevents a bank from placing a low-income or consumer advocate on the board if they,

EXHIBIT 1
DATE 1/5/89
HB 19

don't have the money to buy the stock. A bank may want a diversified board to represent all special interests in his community and is restricted by this law.

Also, most state banks use a buy-back agreement with their directors wherein they guarantee to buy back the stock when the director leaves the board. According to section 32-1-324 every director must own the stock in his own right and not pledge it as security for any loan and debt. Technically most state banks are violating the law today.

Montana law, Section 35-1-401, does not require directors for all other corporations to be share holders of the corporation to serve on their board. This is also true with competing financial providers like credit unions, savings and loans, stock brokers, retailers, etc.

We sought counsel with other banks, the Montana Bankers Association, and the Commissioner of Financial Institutions. Everyone agreed it was an archaic law for which no one can figure out why it was ever required in the first place. Perhaps someone thought years ago a bank director should have qualifying shares of stock to enhance his interest in the bank. Today, however, bank directors are subject to a host of laws with fines and imprisonment, plus they are liable for their actions. Further, a bank director's personal assets are at risk in a multi-million dollar bad faith lawsuit.

This archaic law simply discriminates against state banks, and is a useless nuisance that causes additional administrative headaches and costs which are ultimately passed on to the consumer.

We urge you to approve HB-19.

there are directors to be elected or to cumulate said shares and give one candidate as many votes as the number of directors multiplied by the number of his shares of stock shall equal or to distribute them on the same principle among as many candidates as he shall think fit.

(2) The board of directors may prescribe the form and manner of executing proxies. The shares of stock of an estate of a minor or of a person of unsound mind may be represented and voted by his guardian and of a deceased person by his executor or administrator, and every person who shall pledge his stock may nevertheless represent and vote the same at all meetings unless the pledgor appoints the pledgee as a proxy in accordance with the bylaws of the company.

(3) The board of directors may provide for the closing of the stock books of the company for such length of time prior to the annual election as may be by it deemed convenient for the making up of the lists of the stockholders. Any regular or called meeting of the stockholders may adjourn from day to day or from time to time if for any reason there is not a quorum present or no election is had, such adjournment and the reasons therefor being recorded in the minutes of said meeting.

(4) All elections and other actions at meetings of stockholders or directors shall be conducted in accordance with the laws of the state of Montana governing corporations in general, except as herein otherwise specially provided.

History: En. Sec. 23, Ch. 89, L. 1927; re-en. Sec. 6014.27, R.C.M. 1935; R.C.M. 1947, 5-502.

Cross-References

Business corporations — quorum of directors — voting requirements, 35-1-405.

Business corporations — closing of transfer books and fixing record date, 35-1-503.

Business corporations — voting list, 35-1-504.

Business corporations — voting of shares, 35-1-506.

Business corporations — articles to control as to shareholder voting requirements, 35-1-507.

Business corporations — voting trust — inspection of agreement, 35-1-508.

32-1-324. Director's shares of stock. No person shall be eligible for election as director of a bank unless he is a stockholder of the bank or the owning bank holding company as defined in the federal Bank Holding Company Act of 1956, as that act reads on October 1, 1985, owning in his own right shares thereof of the par value of at least $1,000, and every person elected to be a director, who after such election shall cease to be the owner in his own right of the amount of such stock aforesaid or shall hypothecate or in any way pledge such stock as security for any loan or debt, shall immediately notify the department of such sale or hypothecation, and such director may be removed from the office of director by the department, unless such disability be removed by the acquisition of other shares of stock or release of such pledge within the time prescribed by the department.

History: En. Sec. 11, Ch. 89, L. 1927; re-en. Sec. 6014.15, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 5-209; amd. Sec. 3, Ch. 179, L. 1985.

Cross-References

Sale of securities by officer to bank, 32-1-463.

Removal of directors, officers, or employees, 32-1-468.

Organization of subsidiary trust companies, 32-1-803.

Business corporations — board of directors, [illegible]-401.

32-1-325. Selection of officers and employees — minutes of meetings. (1) The board of directors of a bank must hold a meeting at least quarterly.

Independent Bankers' Opposition to HB19
Point No. 1

This bill undercuts Montana's long-established policies in favor of community-based, locally operated banking and would replace it with remote control bank management. This is not in the public interest. Lending decisions made far away, especially when made in some national financial hub which controls a great many banks, will not be made with the sensitivity to local conditions our present laws assure.

This bill should not be viewed in isolation but together with the merger-and-consolidation bill yet to be introduced. If merger and consolidation passes, the Minnesota Twins will probably coalesce their banks into a single corporation, based in Billings or Great Falls, where each will have a single board of directors making decisions for the 14 First Banks or the 8 Norwest banks. At least those directors would have some awareness of Montana's overall economy. But if that happens and this bill passes, too, the Twins can change all their national charters to state charters and have their boards of directors back in Minneapolis run the respective shows.

A regional banking system based in Minneapolis may be an attractive takeover target for some expanding multinational group of banks. The end result could be a board so remote as to have no clear understanding of even where Montana is.

EXHIBIT 2
DATE 1/15/89
HB 19

Independent Bankers' Opposition to HB19
Point No. 2

The bill would eliminate two well-established features in banking law, found in many states and in federal law.

Stock ownership is a prerequisite to being a director of a state bank in many states. The purposes behind such laws have been described as securing the fidelity of directors in the exercise of their duties (Molner v. South Chicago Savings Bank, 138 F.2d 201), or to protect the public, including depositors, and after that to enable the stockholders to secure a fair return on their investment (Tooker v. Inter-County Title Guaranty, 293 N.Y. 386). In the National Bank Act, Congress requires directors of national banks to own stock of at least $1,000 par value in the bank.

Residence: A number of states require a majority of a bank's directors to be residents of the state (Am. Jur. 2d, Banks, sec. 78). Congress has put a similar requirement in the National Bank Act, that at least two-thirds of the board reside in the state or within a 100-mile radius of the bank (12 U.S. Code sec. 72). The idea behind this requirement is that local directors are more likely to know the trustworthiness of those hired to run the bank and to know the character and ability of those who want to borrow (1st Nat. Bank v. Hawkins, 174 U.S. 364).

HOW CAN A BOARD OF DIRECTORS SITTING IN MINNEAPOLIS, OR IN NEW YORK OR TOKYO, ACT ON LOAN APPLICATIONS AS KNOWLEDGEABLY AS A LOCAL BOARD OF DIRECTORS COULD?

Independent Bankers' Opposition to HB19
Point No. 3:

Here is the section in the National Bank Act which requires every director in a national bank in Montana to own at least $1,000 worth of shares in the bank, and which requires 2/3 of the directors to reside in Montana or within 100 miles of the bank:

§ 72. Qualifications

Every director must, during his whole term of service, be a citizen of the United States, and at least two-thirds of the directors must have resided in the State, Territory, or District in which the association is located, or within one hundred miles of the location of the office of the association, for at least one year immediately preceding their election, and must be residents of such State or within a one-hundred-mile territory of the location of the association during their continuance in office, except that in the case of an association which is a subsidiary or affiliate of a foreign bank, the Comptroller of the Currency may in his discretion waive the requirement of citizenship in the case of not more than a minority of the total number of directors. Every director must own in his or her own right, either shares of the capital stock of the association of which he or she is a director the aggregate par value of which is not less than $1,000, or an equivalent interest, as determined by the Comptroller of the Currency, in any company which has control over such association within the meaning of section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841) [12 USCS § 1841]. If the capital of the bank does not exceed $25,000, every director must own in his or her own right either shares of such capital stock the aggregate par value of which is not less than $500, or an equivalent interest, as determined by the Comptroller of the Currency, in any company which has control over such association within the meaning of section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841) [12 USCS § 1841]. Any director who ceases to be the owner of the required number of shares of the stock, or who becc other manner disqualified, shall thereby vacate his place.

(As amended Sept. 17, 1978, P. L. 95-369, § 2, 92 Stat. 608; Mar. 31, 1980, P.L. 9 VII, Part A, § 710, 94 Stat. 189.)

WHY DOES HB19 PROPOSE TO DO AWAY WITH SIMILAR REQUIREMENTS FOR DIRECTORS OF STATE-CHARTERED BANKS?

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT

Call to Order: By Bob Pavlovich, on January 12, 1989, at 9 a.m.

ROLL CALL

Members Present: All

Members Excused: None

Members Absent: None

Staff Present: Paul Verdon and Sue Pennington

Announcements/Discussion: There will be no hearing on HB 81, that has been withdrawn at the request of the sponsor.

EXECUTIVE SESSION ON HOUSE BILL 19

Discussion: Rep. Bachini stated that amendments were submitted by the sponsor, Rep. Swysgood, which everyone has a copy of. These amendments require that two-thirds of the board of directors must be residents of Montana and strikes the requirement that a director hold stock the company. At the subcommittee hearing, the Montana Independent Bankers argued that there should be an order that the directors be more responsible. The independent bankers feel that the director should hold some kind of stock within the company. The Montana Banker's amendment leaves it to the by-laws of that institution, some may require it, some may not require it. I did discuss with John Cadby just what the director's liabilities are. Directors are liable for their decisions and actions on their boards. Rep. Blotkamp and I both feel that the reinstatement of the two-thirds which was the major concern of this committee and with the responsibility here, we both concur with the amendment presented to us and we feel that with the by-laws and federal laws, securities laws, and antitrust laws that those people have to serve under, that a person serving as a bank director is going to be responsible without having to own stock in that bank. It is our recommendation that

the committee accept this with their approval.

Amendments and Votes: Rep. Bachini moved HB 19 as a DO PASS and moved the amendments as submitted by Rep. Swysgood of which you have a copy be passed. He has already explained what the amendments do. Amendments passed unanimously.

Recommendation and Vote: HB 19 passed as amended unanimously.

HEARING ON HOUSE BILL 94

Presentation and Opening Statement by Sponsor: Rep. Bob Gilbert stated that this bill allows entities in the state of Montana with more than 100 vehicles to register them at a central point, through the Registrar of Motor Vehicles in Helena, rather than going to the numerous courthouses throughout the state. By doing this they will have one individual making the application here in Helena, there will be a $7.50 fee charged that the state will retain for administration, there will be a $3.00 fee that will go back to the counties and go into their fund, the taxes will go to the county, no loss of taxes whatsoever. This will eliminate a lot of time and paper work on behave of the corporations as well as the counties.

List of Testifying Proponents and What Group They Represent:

Gene Phillips, Pacific Power and Light Co.,
Northwestern Telephone Systems
Gene Pidgeon, MDU Resources
Karla Gray, MPC
Tom McGree, US West

List of Testifying Opponents and What Group They Represent:

None

Testimony: Gene Pidgeon stated that with over 200 vehicles in their eastern Montana service territories and the number of counties they have to cover, this is a good bill and they support it.

Karla Gray stated that Montana Power Co. has in excess of 950 vehicles registered throughout the state of Montana. This is a great bill for them and they support it.

DAILY ROLL CALL

BUSINESS & ECONOMIC DEVELOPMENT COMMITTEE

51th LEGISLATIVE SESSION -- 1989

Date 01 12 89

NAME	PRESENT	ABSENT	EXCUSED
PAVLOVICH, BOB	X		
DeMARS, GENE	X		
BACHINI, BOB	X		
BLOTKAMP, ROB	X		
HANSEN, STELLA JEAN	X		
JOHNSON, JOHN	X		
KILPATRICK, TOM	X		
McCORMICK, LLOYD "MAC"	X		
STEPPLER, DON	X		
GLASER, BILL	X		
KELLER, VERNON	X		
NELSON, THOMAS	X		
SIMON, BRUCE	X		
SMITH, CLYDE	X		
THOMAS, FRED	X		
WALLIN, NORM	X		
PAUL VERDON	X		

CS-30

ROLL CALL VOTE

BUSINESS & ECONOMIC DEVELOPMENT COMMITTEE

DATE 1/17 BILL NO. HB19 NUMBER 1

NAME	AYE	NAY
Bob Pavlovich		
Gene DeMars		
Bob Bachini		
Rob Blotkamp		
Stella Hansen		
John Johnson		
Tom Kilpatrick		
Lloyd McCormick		
Don Steppler		
Bill Glaser		
Vernon Keller		
Thomas Nelson		
Bruce Simon		
Clyde Smith		
Fred Thomas		
Norm Wallin		
TALLY	16	

Sue Pennington
Secretary

Bob Pavlovich
Chairman

MOTION: Motion was made to pass as amended.

Form CS-31
Rev. 1985

STANDING COMMITTEE REPORT

January 12, 1989

Mr. Speaker: We, the committee on Business and Economic Development report that HOUSE BILL 19 (first reading copy -- white) do pass as amended .

Signed: _____
Robert Pavlovich, Chairman

And that such amendments to HOUSE BILL 19 read as follows:

1. Title, line 5.
Following: "STOCKHOLDERS"
Strike: the remainder of line 5 and line 6 through "STATE"

2. Page 1, line 17.
Following: "~~state~~"
Insert: ", of whom at least two-thirds must be residents of Montana"

3. Page 1, line 17.
Following: " be"
Strike: the remainder of line 17 and line 18 through "or"

Amendments to House Bill No. 19
First Reading Copy

Requested by Representative Swysgood
For the Committee on Business and Economic Development

Prepared by Paul Verdon
January 5, 1989

1. Title, line 5.
Following: "STOCKHOLDERS"
Strike: the remainder of line 5 and line 6 through "STATE"

2. Page 1, line 17.
Following: "~~state~~"
Insert: ", of whom at least two-thirds must be residents of Montana"

3. Page 1, line 17.
Following: " be"
Strike: the remainder of line 17 and line 18 through "or"